

RODRIGO ACOSTA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.*G. R. No. L-17427. July 31, 1962*

Ponente: CONCEPCION, J.

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Appeal by certiorari, taken by Rodrigo Acosta, from a decision of the Court of Appeals remanding this case to the court of origin for retrial and the rendition of judgment in accordance with the evidence that the parties may then present.

It appears that on January 2, 1951, an information for malversation of public funds thru reckless negligence was filed, with the Court of First Instance of Bukidnon, against petitioner Rodrigo Acosta, for having allegedly made, as Provincial Treasurer of Bukidnon, "irregular and excessive purchases of supplies, materials, equipment and printed forms from private dealers for the use of the province", and against Leonardo Avila, for having, as Provincial Auditor of the same province, "passed in audit the corresponding vouchers covering the payments for such purchases". Subsequently, the information was amended to include as defendants three (3) private dealers, namely, C. Silvestre, E. M. Haravata and Victoriano C. Arias, who had allegedly been able to collect payments on said purchases. Still later, however, the prosecution filed a second amended information excluding said dealers from the charge.

The trial under this second amended information, in connection with which Acosta and Avila had entered a plea of not guilty, began on June 19, 1952 and ended on July 28 of the same year. However, the trial Judge, Hon. Jose F. Veluz, retired from the service without having decided the case. His successor in office, Hon. Vicente Abad Santos, Judge, "found the transcript of 482 pages prepared by stenographer Celestino Suarez" replete with "omissions and also inaccuracies which had been indicated by means of marginal notes on the pages mentioned in" an "order of September 25, 1957". Judge Abad Santos directed, therefore, said stenographer "to re-transcribe his notes and to submit the 'new transcript as well as the first transcript' not later than forty days after receipt of a copy of said order". But, "instead of re-transcribing his notes * * *, Mr. Suarez merely made corrections in handwriting and inserted some supplemental transcripts in the original transcript". Upon reading these supplemental typed transcripts, particularly the portion covering the cross-examination of witness Pedro Palafox by defense counsel Cipriano Asada, Judge Abad Santos noticed, however, that it was still "full of inaccuracies". Accordingly, he ordered the stenographer to read his notes in his (Judge Abad Santos') chamber, in order that the necessary corrections could be made on the transcript. Upon going over said notes, it appeared that said portion "consisted of eleven pages although the transcript thereof was spread to eight pages only". Hence, Suarez was ordered to further transcribe what had thus been omitted. What is more, in order that he could decide the case with a "clear conscience", Judge Abad Santos bade Suarez to stay in his (Judge Abad Santos) office in order to read his (Suarez') notes from the beginning, with stenographer Montes checking the transcript already made. Although he did not immediately reveal his objection thereto, Suarez later refused to work in said office stating that "it made him dizzy to come up and" that "besides he was going to resign or retire" and then asked to be allowed to do his

work in the first floor of the court house. Instead of granting this request, Judge Abad Santos recommended to the Department of Justice, in order to avoid further delay in the disposition of the case: (a) that any application for retirement or resignation that may be submitted by Suarez be denied; and (b) that payment of his salary be suspended until otherwise recommended, after compliance with the order that he should work in the office of the Judge, provided that the result of his work is satisfactory. Eventually, the transcript of the stenographic notes, certified to be "true and correct", consisted of 658 pages as compared to only 4682 pages found by Judge Abad Santos on September 9, 1957.

Meanwhile, Judge Abad Santos had resigned leaving the case undecided. He was succeeded in office by Hon. Abundio Arrieta, Judge, who on October 17, 1958, rendered a decision convicting the defendants as charged and sentencing each to an indeterminate penalty ranging from eleven (11) years, six (6) months and twenty (20) days of prison mayor to sixteen (16) years, five (5) months and eleven (11) days of reclusion temporal, to pay a fine of P28,808.86, representing one-half of the total sum allegedly misappropriated, as well as to jointly and severally indemnify the province of Bukidnon in the sum of P62,955.06, without subsidiary imprisonment in case of insolvency, to perpetual disqualification and to pay the costs.

Both defendants appealed from this decision to the Court of Appeals and urged the same to acquit them upon the ground, among others, that said decision was based on incomplete and tampered transcript, upon which a conviction beyond reasonable doubt could not be predicated. Acosta, moreover, claimed that his constitutional right to a speedy trial had been violated. On July 2, 1960, the Court of Appeals rendered its decision, from which we quote:

"* * * on the basis of available transcript, (which originally contains 482 pages and when retranscribed and corrected it consists of 658 pages), indicating that irregularities in taking the notes and in transcription thereof were committed, we can not see our way clear to pronounce either a conviction or acquittal in this case. Indeed, the evidence in this case is not quite accurate or reliable for the reasons already underscored earlier. Since the crime with which the accused were charged carries a stiff penalty and that it is one that should be fully prosecuted for being highly undesirable, if not immoral, we prefer to subordinate acquittal or conviction to time. Stated otherwise, we are of the opinion that the ends of justice, both to the government and to the accused, would be better served if further proceedings will take place in order that this case could be decided satisfactorily once and for all.

"From the corrected' transcript, we gathered that counsel for accused Leonardo Avila in the court below incurred certain inconsistencies, to wit:

(1) Your Honor please, without renouncing or waiving our rights to present evidence for the defense of the accused Leonardo Avila, * *, we move for the dismissal of this case on two grounds:

* * * "

(2) As regards the accused Avila, your Honor, we waive our right to present evidence on his defense and we rest our case with respect to the accused Avila, and we submit the case for decision with the evidence presented by the Fiscal, and we beg to allow us to withdraw—insofar as the accused Avila is concerned—we beg to leave the courtroom.

(3) We do not ask for a separate trial, your Honor, in order to obviate duplicity of questions, but now we will ask for a separate defense.

(4) And that is within the lookout of the defense, Your Honor, and we reiterate our motion to leave this Honorable Court to allow us to leave the courtroom, and consider our case close, (t.s.n., pp. 545, 554 & 558.)

"On appeal, counsel for appellant Leonardo Avila filed a motion for new trial, because of the aforementioned

statements and of the erroneous and incomplete transcript of the trial stenographer. The motion was, however, denied (Res., 3rd Div., Feb. 12, 1959). Appellate Courts have that broad power to order new trial without specifying the grounds therefor in order to avoid a miscarriage of justice. The grounds upon which courts of first instance may grant a new trial are limited (Pls. see Sec. 5, Rule 117/ Rules of Court), but appellate courts, under section 14, Rule 120, are authorized to remand a case to a court of first instance for new trial or retrial, without specifying, and, hence, without limiting, the grounds upon which the action may be predicated. And pursuant to section 11, Rule 120, of the Rules of Court, an appellate court may * * * remand a case to a court of first instance for new trial or retrial * * *.

"WHEREFORE, the record of this case is ordered remanded to the court of origin for retrial and another judgment be rendered in accordance with the evidence that the parties concerned may desire to present."

Acosta sought a reconsideration of this decision, which was denied. Hence, his present appeal by certiorari.

Petitioner maintains that the Court of Appeals erred in ordering a retrial, instead of acquitting him, not only because he had been deprived of the constitutional right to a speedy trial, but, also, because a retrial would be impractical, oppressive and expensive, apart from amounting to a denial of justice, for a principal witness for the defense, one Justiniano B. Castillo, had allegedly died on December 24, 1957, and his other witnesses may no longer be available.

It should be noted that the original information in this case was filed on January 2, 1951 and that the trial for the reception of the evidence for both parties commenced on June 19, 1952 and was finished on July 18 of the same year. Petitioner does not contend that there has been any undue delay in this part of the proceeding's. His alleged deprivation of the right to a speedy trial is anchored on the fact that the decision of the lower court was rendered over six (6) years later. In this connection, the Court of Appeals aptly observed:

"* * * True enough that judgment was pronounced after almost six years. But 'the constitutional right to a public and speedy trial does not extend to the act of pronouncement of sentence' (Reed vs. State, 147 Ind., 46 N.E., 135, 136). It has been said that 'trial and judgment are two different stages of a judicial proceeding: the former is provided for in Rule 115, and the latter is covered by Rule 116, of the Rules of Court' (Talabon vs. Iloilo Prov. Warden, 78 Phil., 600). And 'the period of the trial terminates when the judgment begins' (Felismino vs. Gloria, 47 Phil., 967). Therefore, and since the accused did not avail themselves of the writ of mandamus to compel the trial judge or his successor to pronounce the corresponding judgment, it may be said in the light of the ruling laid down in the case of Talabon vs. Iloilo Prov. Warden, *Infra*, that they had waived their right to a speedy trial".

Indeed:

"No general principle fixes the exact time within which a trial must be had to satisfy the requirement of a speedy trial. The right to a speedy trial is necessarily relative; it is consistent with delays, and whether such a trial is afforded must be determined in the light of the circumstances of each particular case as a matter of judicial discretion. It is generally said that a speedy trial is one had as soon after indictment as the prosecution can with reasonable diligence prepare for it, regard being had to the terms of court, a trial conducted according to fixed rules, regulations and proceedings of law, free from vexations, capricious, and oppressive delays. An accused of crime is not entitled to a trial immediately on his arrest or accusation, he must wait a regular term of the court having jurisdiction of the offense with which he is charged, until an indictment is found and presented if the case is one wherein the trial is on indictment, and until the prosecution has had a reasonable time to prepare for the trial." (22 C.J.S., 715-716.)

"Under constitutional provisions securing to accused 'the right to a public trial* or to a 'speedy trial', it has been held that the formal declaration of sentence is no part of the trial." (24 C.J.S., 16.)

Moreover, the delay in the rendition of the decision of the Court of First Instance was due to circumstances beyond the control of the judges who presided the same, Judge Veluz, who received the evidence, was automatically retired owing to his age. Judge Abad Santos, who succeeded him, could not decide the case because he found the transcript to be inaccurate and he had to make disciplinary measures in order to compel stenographer Suarez to re-transcribe his notes. By the time this was done, Judge Abad Santos was no longer in the service. Hence, his successor Judge Arrieta was the one who rendered the decision of the lower court.

Upon the other hand, we cannot, in the exercise of our jurisdiction on appeal by certiorari absolve the petitioner of the crime charged against him, for there are no findings of fact in the decision of the Court of Appeals upon which this Court could base a judgment of acquittal. Moreover, the opinion of the Court of Appeals to the effect that the transcript of the stenographic notes taken during the trial of this case in the Court of First Instance does not reflect faithfully what transpired during said trial is, apart from being shared by petitioner herein, conclusive upon us. Under these circumstances, we should not interfere in the exercise of discretion by the Court of Appeals. In the language of Corpus Juris:

"Under a statute which provides that a person restrained of his liberty is entitled to certiorari to inquire into the cause of his imprisonment, certiorari does not lie to review a determination in a criminal case where relator was discharged from custody under a bail bond. The reason for such a rule is that the relator, therefore, was not restrained of his liberty. The imprisonment or restraint in his liberty within the meaning of this section, is an actual physical restraint by which the liberty of the individual 'is in some way interfered with. A person cannot be said to be restrained in his liberty when he can do what and go where he pleases. The mere fact that his bail has authority to surrender him to custody at any time is not a restraint in his liberty. * * * If the relator should be surrendered by his bail, and thus be actually in custody, he would be entitled to have the cause of his detention reviewed; but until there is an actual restraint of his liberty, he is not entitled to either of these writs (certiorari or habeas corpus) * * *." (17 Corpus Juris, pp. 18-19.)

We are not unaware of the possible disadvantages to which petitioner might be placed in the event of a retrial, but we are not in a position now to determine the effects of such disadvantages. In fact, the very petitioner has not particularized the evidence which might not be available to him at a retrial, aside from the circumstance that the prosecution may then be similarly handicapped. In any event, when the retrial takes place, petitioner may point out what evidence he can no longer present and why, and the Court¹ should then consider the effect thereof upon the question of guilt or innocence of petitioner herein.

Wherefore, the decision of the Court of Appeals is hereby affirmed, and the case remanded to the Court of First Instance of Bukidnon for further proceedings, in compliance therewith. It is so ordered.

Bengzon, C. J., Padilla, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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